

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MICHAEL CAPODIECE and
TERRY L. CAPODIECE,

No. C 13-00032 WHA

Plaintiffs,

v.

WELLS FARGO BANK and DOES 1–5,

Defendants.

**ORDER TO SHOW CAUSE
AND ORDER CONVERTING
MOTION TO DISMISS
INTO MOTION FOR PARTIAL
SUMMARY JUDGMENT**

In this wrongful foreclosure action, defendant moved to dismiss plaintiffs’ complaint. Plaintiff’s counsel, Emmanuel Fomukong Fobi, failed to show at the April 11 hearing on the motion. Without notice and in violation of local rules, another attorney, Yesenia Marisol Santacruz, made a “special appearance” instead. Plaintiff’s counsel Emmanuel Fomukong Fobi is hereby **ORDERED TO SHOW CAUSE** why he should not have to pay defendant’s attorney’s fees and costs for appearing at the April 11 hearing. Attorney Santacruz is now also an attorney to be noticed for plaintiffs and is **ORDERED TO SHOW CAUSE** for the same. She, however, may file a motion to withdraw from this action, and if granted, she will no longer be subject to this order to show cause. Counsel’s response is due by **NOON, MAY 8**.

One of plaintiffs’ claims is that an individual named Ric Juarez fraudulently signed and filed in Dallas County, Texas, a substitution of trustee that swapped out Gold West Savings Association Service Company with NDEX West, LLC as trustee of plaintiffs’ deed of trust.

1 Plaintiffs contend Ric Juarez was neither an agent or an employee of Wells Fargo (now the
2 successor-in-interest of the loan secured by the deed of trust) and therefore, Ric Juarez was not
3 authorized to sign the substitution of trustee. Plaintiffs contend that this establishes that NDEX
4 West was never correctly substituted.

5 Pursuant to FRCP 12(d), defendant's motion to dismiss is hereby converted into a motion
6 for partial summary judgment. Defendants are ordered to submit sworn declarations of
7 individuals with first-hand knowledge of any chain of documentation regarding Ric Juarez's
8 authorization that was in place *at the time* the substitution of trustee was filed. Defendant's
9 response is due by **NOON, APRIL 25, 2013**. Plaintiffs' counsel may submit declarations
10 explaining why discovery is needed on the issue of Ric Juarez's authorization by **NOON, MAY 2,**
11 **2013**. The hearing for partial summary judgment will be at **8:00 A.M., MAY 9, 2013**. An order
12 regarding defendant's motion to dismiss as to plaintiffs' other claims will issue after the May 9
13 hearing.

14
15 **IT IS SO ORDERED.**

16
17 Dated: April 12, 2013.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE